

REMARKS

Claims 1-13 are pending in this application. Claims 1-13 stand rejected. In light of the remarks set forth below, Applicant respectfully request reconsideration and withdrawal of the rejection and submits that each of the pending claims is in immediate condition for allowance.

Claims 1-3, 6-8, 11, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's admitted prior art in view of U.S. Patent No. 6,167,438 ("Yates") and further in view of U.S. Patent No. 6,820,133 ("Grove"). Applicant respectfully requests reconsideration and withdrawal of this rejection.

Each of Applicant's independent claims explicitly recites that a monitor packet is continuously transmitted to the relay server for measuring a time delay and that the relay server is not on the direct path between the server and the requester. Applicant respectfully submits that this limitation is not present in Grove.

In Grove, a client node attempts to retrieve a fixed web object from a server. The response time is measured by the client node. This test object may be referred to using a fixed URL such as "test.html". The text object may be retrieved directly from a specified server or may be fetched using an intermediary server node. The test is performed a configurable number of times and the results for each server are averaged so as to derive an estimate of download time between the client node and the server. This is unlike Applicant's explicitly recited claims.

In contrast, according to Applicant's explicitly recited limitation, a monitor packet is continually transmitted to the claimed relay server and an average delay time is measured. It should be noted that the relay server is adjacent to one of the routers and is not the client node or server node disclosed in Grove. Thus, Applicant respectfully submits that Applicant's independent claims are allowable over the cited

combination because at least Grove fails to anticipate the limitation for which it was cited.

Additionally, Applicant respectfully submits that the Office Action fails to set forth a prima facie case of obviousness because there is no motivation to make the two-fold modification of Applicant's admitted prior art which, even if one were to make, do not disclose the claimed invention. The Office Action is required to explain the reasons why one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious. See, In re Leonard R. Kahn, Civ. A. No. 04-1616 (Fed. Cir. decided March 22, 2006).

The Office Action asserts that one would be motivated to modify the prior art based on the teachings in Grove because Grove discloses providing accelerated delivery of dynamically generated and non-static content as well as static content. However, the system in Grove discloses downloading between a client node and a server or a client node and a server node in contrast to the claimed downloading of data from a relay server which is not a portion of the direct path between the server and the information request source.

The Grove reference is directed to providing accelerated delivery. In Applicant's explicitly recited invention, information that is not urgent is transferred through a network. Thus, one would not be motivated to look at the teachings in Grove which, do not disclose Applicant's explicitly recited limitations, to arrive at Applicant's invention. Therefore, Applicant's respectfully submit that each of the pending claims is in condition for allowance because no motivation to combine has been provided.

Applicant has responded to all of the rejections and objections recited in the Office Action. Reconsideration and a Notice of Allowance for all of the pending claims are therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the Examiner believes an interview would be of assistance, the Examiner is welcome to contact the undersigned at the number listed below.

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Respectfully submitted,

By

Ian R. Blum

Registration No.: 42,336

DICKSTEIN SHAPIRO MORIN & OSHINSKY
LLP

1177 Avenue of the Americas
New York, New York 10036-2714
(212) 835-1400
Attorney for Applicant

IRB/mgs